APPENDIX.

Excerpt From Senate Report No. 1353 90th Congress, Second Session.

"In this connection, the question is raised whether this bill adds or subtracts anything from the powers of State or local governments. *It is not the intent of the committee in recommending this legislation to effect any change in the existing apportionment of powers between the Federal and State and local governments.*

"In this regard, we concur in the following views set forth by the Secretary in his letter to the committee of June 22, 1968:

'The Courts have held that the Federal Government presently preempts the field of noise regulation insofar as it involves controlling the flight of aircraft. Local noise control legislation limiting the permissible noise level of all overflying aircraft has recently been struck down because it conflicted with Federal regulation of air traffic. American Airlines v. Town of Hempstead, 272 F. Supp. 226 (U.S.D.C., E.D., N.Y., 1966). The court said at 231, "The legislation operates in an area committed to Federal care, and noise limiting rules operating as do those of the ordinance must come from a Federal source." H.R. 3400 would merely expand the Federal Government's role in a field already preempted. It would not change this preemption. State and local governments will remain unable to use their police powers to control aircraft noise by regulating the flight of aircraft.

'However, the proposed legislation will not affect the rights of a State or local public agency, as the proprietor of an airport, from issuing regulations or establishing requirements as to the permissible level of noise which can be created by

aircraft using the airport. Airport owners acting as proprietors can presently deny the use of their airports to aircraft on the basis of noise considerations so long as such exclusion is nondiscriminatory.

'Just as an airport owner is responsible for deciding how long the runways will be, so is the owner responsible for obtaining noise easements necessary to permit the landing and takeoff of the aircraft. The Federal Government is in no position to require an airport to accept service by larger aircraft and, for that purpose, to obtain longer runways. Likewise, the Federal Government is in no position to require an airport to accept service by noisier aircraft, and for that purpose to obtain additional noise easements. The issue is the service desired by the airport owner and the steps it is willing to take to obtain the service. In dealing with this issue, the Federal Government should not substitute its judgment for that of the States or elements of local government who, for the most part, own and operate our Nation's airports. The proposed legislation is not designated to do this and will not prevent airport proprietors from excluding any aircraft on the basis of noise consideration.'

"Of course, the authority of units of local government to control the effects of aircraft noise through the exercise of land use planning and zoning powers is not diminished by the bill.

"Finally, since the flight of aircraft has been preempted by the Federal Government, State and local governments can presently exercise no control over sonic boom. The bill makes no change in this regard. (Italics added.)

Excerpt From 34 Federal Register 18355-18356, Nov. 18, 1969.

"Relation to responsibility of airport proprietors. Compliance with Part 36 is not to be construed as a Federal determination that the aircraft is 'acceptable,' from a noise standpoint, in particular airport environments. Responsibility for determining the permissible noise levels for aircraft using an airport remains with the proprietor of that airport. The noise limits specified in Part 36 are the technologically practicable and economically reasonable limits of aircraft noise reduction technology at the time of type certification and are not intended to substitute federally determined noise levels for those more restrictive limits determined to be necessary by individual airport proprietors in response to the locally determined desire for quiet and the locally determined need for the benefits of air commerce. This limitation on the scope of Part 36 is required for consistency with the responsibilities placed upon the airport proprietor by the U.S. Supreme Court in *Griggs v. Allegheny County*, 369 U.S. 84 (1962). Consistent with this limited scope, this amendment specifies that the Federal Aviation Administration makes no determination, under Part 36, on the acceptability of the prescribed noise levels in any specific airport environment (see §§ 36.5 and 36.1581(a)) . . . . [T]he FAA, in response to the *Griggs* decision (see above), recognizes the right of State or local public agencies, as the proprietors of airports, to issue nondiscriminatory restrictions with respect to the permissible level of noise that can be created by aircraft using their airports. However, the FAA does not recognize any right of any State or local government agency that is not an airport proprietor to issue any regulation controlling the flight of aircraft for noise purposes." (34 Federal Register 18355-18356, Nov. 18, 1969.)

UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D. C.

Regulatory Docket No. 9071

In the matter of the petition of
JORDAN A. DREIFUS
to amend the Federal Aviation Regulations to prescribe aircraft noise regulations for turbojet aircraft operations at the Santa Monica, California Municipal Airport.

Denial of Petition.

By letter dated July 19, 1968, and supporting letters dated September 3, 1968, October 1, 1968, January 27, 1969, March 3, 1969, March 6, 1969, March 18, 1969, and May 24, 1969, Jordan A. Dreifus, on his own behalf, petitioned for rule making to amend the Federal Aviation Regulations to prescribe noise restrictions and limitations for turbojet aircraft operating at the Santa Monica Municipal Airport.

In support of his request, petitioner makes the following arguments (here condensed):

(1) Petitioner's residence near the airport is becoming exposed to increasing turbojet aircraft traffic and resulting noise.

(2) Other airport neighbors are suing the airport seeking damages based on aircraft noise.

(3) The FAA has the authority under section 307 of the Federal Aviation Act to issue noise standards governing the flight of aircraft at the airport.

(4) New section 611 of the Federal Aviation Act gives the FAA the duty to issue noise standards governing the flight of aircraft at the airport.

(5) New section 611 of the Federal Aviation Act has probably obliterated all State or local authority to issue such regulations.

(6) The exclusive jurisdiction of the FAA in the field of aircraft noise abatement was upheld in the case of *American Airlines, Inc. v. Town of Hempstead*, 272 Fed. Supp. 226 (1966).

(7) Under Agency Order 7110.13, entitled "Aircraft Noise Abatement Programs," the FAA has instituted voluntary noise abatement procedures for airports including runway use restrictions, air traffic control procedures, and routings where compatible with safety.

(8) Failure of the FAA to issue restrictions at Santa Monica and other airports would allow the State and local governments to issue their own airport use restrictions. The restrictions would result in chaos, confusion, interference and obstruction to aircraft operations, which could be contrary to the national interest. The local restrictions could be arbitrary, unreasonable and obscure, and could discriminate against "general aviation" as distinct from interstate commercial carriage or "air transportation." Aside from resulting in litigation, local discrimination against "general aviation" would be contrary to the Federal Aviation Act of 1958.

(9) Failure of the FAA to issue noise abatement regulations for Santa Monica and other airports would be incompatible with the primary reason for the Federal Aviation Act of 1958, which was the unification of the control of aircraft operations in a single Federal agency to assure safety and the orderly development of aviation.

(10) State and local noise abatement restrictions would not be effective because of the uncertainty with which they would be met by the courts. Petitioner states that a Santa Monica municipal regulation concerning aircraft noise at the airport was recently declared invalid by a State court.

(11) The FAA has the authority to restrict the use of Washington National Airport.

Petitioner supplements the above arguments with noise exposure data developed by a consulting firm, a reference to noise levels specified in FAA Notice of Proposed Rule Making 69-1, the relationship of these figures to a Santa Monica Airport noise report, and newspaper articles concerning the severity of the airport noise problem.

Petitioner makes two basic requests, (1) a general request to issue any aircraft noise regulations "as may be necessary or appropriate in the circumstances" to relieve the noise burden on the neighbors of the Santa Monica Airport, and (2) a specific request to restrict the hours of operation of turbojet aircraft at the airport, as was attempted by the City of Santa Monica in the ordinance that petitioner states was held invalid by the State Court.

With respect to petitioner's first, general request, the FAA has, in fact, implemented Order 7110.13 (cited by petitioner) with respect to the Santa Monica Airport, in cooperation with the City of Santa Monica. This has involved (1) the use of a noise abatement runway when permitted by wind conditions; (2) the use of a noise abatement departure path to avoid congested areas; and (3) the use of raised traffic pa-

ports. In addition, the FAA monitors the conditions at the airport in order to anticipate new noise problems or possible solutions, at the airport. Further, section 91.87 of Part 91 of the Federal Aviation Regulations prescribes noise abatement approach, departure, and runway requirements that must be complied with by turbine-powered and large airplanes. Beyond these rules, and the FAA's monitoring of the Santa Monica Airport under the FAA Order, the FAA believes that further relief from aircraft noise should involve airport use restrictions similar to those that petitioner states were issued in the Santa Monica City Ordinance. In short, the FAA at present does not know of any action, short of the type attempted by Santa Monica, that will satisfy the needs of the neighbors of the airport or supply the relief requested. In light of the above, petitioner's general request for rule making not of the kind attempted by the City of Santa Monica is hereby denied.

In support of petitioner's specific request for time limitations similar to those attempted by the City of Santa Monica, petitioner states that such rules "would avoid a major area of possible dispute with surrounding residents." The FAA agrees that nondiscriminatory time restrictions may be an effective and appropriate means of adapting aircraft noise to the needs of local communities. Petitioner states that the "final question for consideration is: what level of government has the power to so regulate or restrict aircraft operations? and what level of government *should be* the proper one to exercise such power?" With regard to the existence of Federal power to substitute its judgment for that of the local governments who own and operate airports, the FAA agrees with petitioner (see petitioner's arguments 3 and 4 above) that the Federal Avia-

tion Act provides broad powers in the field of aircraft noise abatement.

However, with respect to the question as to which level of government would be the proper one to deny the use of airports to aircraft on the basis of noise considerations (as would be involved in the requested time limitations), the FAA does not agree with petitioner that new section 611 of the Federal Aviation Act has obliterated the authority of State or local government proprietors of airports (see petitioner's argument 5 above). To the contrary, Senate Report 1353, *Aircraft Noise Abatement*, July 1, 1968, (concerning Public Law 90-411, H.R. 3400, July 21, 1968, which added new section 611 to the Federal Aviation Act of 1958) makes the following statement of Congressional intent concerning the relation of the new legislation to local government initiatives, and in so doing adopts *verbatim* views expressed by the Secretary of Transportation in his letter to the Senate Committee of June 22, 1968 (emphasis supplied):

> The courts have held that the Federal Government presently preempts the field of noise regulation insofar as it involves controlling the flight of aircraft. Local noise control legislation limiting the permissible noise level of all overflying aircraft has recently been struck down because it conflicted with Federal regulation of air traffic. *American Airlines v. Town of Hempstead*, 272 F. Supp. 266 (U.S.D.C., E.D., N.Y., 1966). The court said, at 231, 'The legislation operates in an area committed to Federal care, and noise limiting rules operating as do those of the ordinance must come from a Federal source.' H.R. 3400 would merely expand the Federal Government's role in a field

already preempted. It would not change this preemption. *State and local governments will remain unable to use their police powers to control aircraft noise by regulating the flight of aircraft.*

However, the proposed legislation will not affect the rights of a State or local public agency, *as the proprietor of an airport,* from issuing regulations or establishing requirements as to the permissible level of noise which can be created by aircraft using the airport. Airport owners *acting as proprietors* can presently deny the use of their airports to aircraft on the basis of noise considerations so long as such exclusion is nondiscriminatory.

Just as an airport *owner* is responsible for deciding how long the runways will be, so is the *owner* responsible for obtaining noise easements necessary to permit the landing and takeoff of the aircraft. The Federal Government is in no position to require an airport to accept service by larger aircraft, and, for that purpose, to obtain longer runways. Likewise, the Federal Government is in no position to require an airport to accept service by noisier aircraft, and for that purpose to obtain additional noise easements. *The issue is the service desired by the airport owner and the steps it is willing to take to obtain the service. In dealing with this issue, the Federal Government should not substitute its judgment for that of the States or elements of local government who, for the most part, own and operate our Nation's airports. The proposed legislation is not designed to do this and will not prevent airport proprietors from excluding any aircraft on the basis of noise considerations.*

The broader policy behind the above quoted letter of June 22, 1968, was earlier stated, in other terms, in the Secretary's letter of March 1, 1968, to the Committee on Interstate and Foreign Commerce of the House of Representatives (emphasis supplied):

> Local communities should, if not inconsistent with overriding national interest, have the option to determine the effects of transportation on their environment. . . .
>
> The exercise of this and other authority by local communities should continue. Local communities select airport sites and determine where they best will serve community needs. They bear the responsibility for insuring compatible land use in the airport environs. They have the necessary promotional, proprietary, planning and land use authorities to carry out this responsibility. They have a very influential voice in determining the type of service they want through their appearances in route proceedings before the CAB. *In short, given the limits imposed by aeronautical technology, the community can and should continue to bear a heavy share of the responsibility for assuring the compatibility of the air service they seek and enjoy with the environmental objectives of the community.*

Based on the above guidelines, petitioner's remaining arguments (see above) supporting federally issued time restrictions at the Santa Monica Airport must be answered as follows:

Petitioner's argument 5, stating that new section 611 has probably obliterated all State and local authority to issue such regulations is not correct. While States may

not use their police power to regulate in any way the flight of aircraft for noise purposes, State and local governmental proprietors of airports may deny the use of their airports to aircraft on the basis of noise considerations so long as such exclusion is nondiscriminatory.

Petitioner's argument 6, implying that the case of *American Airlines, Inc.* v. *Town of Hempstead* requires that the FAA issue time limitations for the Santa Monica airport is not supportable. While this case stated that noise limiting rules operating as those of the Hempstead ordinance must come from a Federal source, the material quoted from the Senate Report distinguished such ordinances from the action taken, by airport proprietors, to exclude aircraft, using their airports, because of noise considerations. The Hempstead ordinance was not an action taken by an airport proprietor to exclude aircraft from the airport.

Petitioner's argument 8, describing the adverse effects of local airport use restrictions is not supported by any facts or experience known to the FAA. This form of locally responsible noise control is clearly in the national interest in the light of the quoted portion of the Senate Report. Further, there is no indication that the noise restrictions required by petitioner would be discriminatively applied.

Petitioner's argument 9, covering the unification objective of the Federal Aviation Act of 1958, is correct insofar as it describes the need for a single Federal agency in the field of the safe, orderly development of aviation. However, the Senate Report makes it clear that just as the FAA recognizes the proprietary interest of airport operators by not requiring an airport to

accept service, so it should recognize the proprietary interest of airport operators by not substituting its judgment, so far as acceptance of noisy aircraft by the airport is conceived, for that of the State or local governmental elements that own and operate the nation's airports.

Petitioner's argument 10, covering the uncertainty with which State and local noise rules would be met by the courts, must be answered directly from the congressional intent expressed in the Senate Report: any action that would prevent any public airport proprietor from taking any nondiscriminatory action to exclude aircraft on the basis of noise considerations would appear to conflict with that express congressional intent. In any case, as stated above, the Senate Report states that the Federal Government should not substitute its judgment for that of public airport proprietors on the issue of the service desired by those proprietors and their resulting judgments concerning the locally determined need to accept or exclude aircraft on the basis of noise considerations.

Petitioner's argument 11, concerning FAA authority to restrict operations at Washington National Airport is not valid since the FAA is the proprietor of that airport. Such action by the FAA would not be a substitution of its judgment for that of a state or local governmental proprietor.

Although no FAA regulation concerning the local Santa Monica airport noise problem is appropriate at this time for the reasons mentioned above, it should be noted, as stated in notice 69-1, that the FAA is studying various types of operating rules for obtaining optimum noise levels around airports, and that, where such study

indicates that appropriate rules can be developed, they will be issued as a notice of proposed rule making for public comment.

In consideration of the foregoing, I find that the requested rule making under sections 307 and 611 of the Federal Aviation Act would not be in the public interest and that the institution of rule making is not justified. Therefore, in accordance with sections 11.73 and 11.27 of Part 11 of the Federal Aviation Regulations, the petition of Jordan A. Dreifus for rule making under sections 307 and 611 of the Federal Aviation Act, respectively, is hereby denied.

/s/ D. D. Thomas
D. D. Thomas
Acting Administrator

Issued in Washington, D.C. on 10 Jul, 1969.